

KATHRYN SANDERS
Claimant

MONTGOMERY WARD
Respondent

NATIONAL UNION FIRE INS. CO.
Insurance Carrier

Conversely, the respondent contends the Administrative Law Judge's Award should be affirmed.

FINDINGS OF FACT

Having reviewed the evidentiary record filed herein, and the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

The claimant is a furniture sales person for the respondent. On January 8, 1995, the claimant was walking out of the office when she slipped and fell down on her right side. The claimant alleged injury to her right wrist and shoulder as a result of this incident.

The claimant had sustained a work-related injury to her back in June 1993 and was receiving treatment for that injury. During an examination for her back injury in February 1995, the claimant had indicated hand pain when she filled out a pain diagram. The claimant testified the doctor diagnosed right carpal tunnel syndrome but advised her it was not work-related. Thereafter, the claimant filed the instant claim alleging injury to both hands, arms and right shoulder.

The claimant had initially received chiropractic treatment in 1994 for her back injury and had advised the chiropractor that her hands were going to sleep a lot. Claimant testified the chiropractor advised her it was all related to her back injury.

The claimant testified her hand, arm and shoulder problems worsened as she continued to work after her fall on January 8, 1995. She noted that her work activities required her to use her hands typing sales data onto the computer, lifting furniture product books, attaching sale prices on furniture, moving furniture and cleaning and dusting. The claimant indicated she spent approximately four hours a day on the computer.

The claimant's current and former supervisors both testified claimant would use the computer to enter sales but that at most she would only be inputting such information a total of minutes not hours a day. It was agreed that after the back injury in 1993 the claimant had restrictions on the hours she could work as well as lifting restrictions which were accommodated by the respondent. Accordingly, the claimant no longer engaged in activities such as moving and lifting furniture.

The parties obtained opposing medical opinions on the issue of whether work activities caused the right carpal tunnel syndrome. The Administrative Law Judge ordered an independent medical examination by Dr. George L. Lucas to determine the cause of the symptoms in claimant's extremities. After receipt of the report from Dr. Lucas, which concluded the carpal tunnel syndrome was not work-related, a preliminary hearing was held on September 5, 1995, and the Administrative Law Judge determined claimant had sustained a compensable injury and ordered the respondent to provide medical treatment for the carpal tunnel syndrome. On review, this decision was affirmed by the Board.¹

¹Sanders v. Montgomery Ward, WCAB Docket No. 199,682 (January 1996).

Over an extended period of time, the claimant received conservative treatment which included physical therapy. Claimant also requested a change of physician from Dr. Philip R. Mills which was denied by the Administrative Law Judge on February 13, 1997. Ultimately, on October 15, 1998, the Administrative Law Judge ordered the claimant to see Dr. Mark Melhorn for an update on her condition. Because claimant was receiving treatment for her prior back injury, it appears that was the main focus of her medical treatment and minimal attention was directed at her upper extremity complaints.

Dr. Melhorn first examined claimant on November 3, 1998, and after a course of conservative treatment performed a right carpal tunnel release on April 26, 1999, and a left carpal tunnel release on July 26, 1999. The doctor opined that neither the slip and fall incident nor claimant's work activities caused or aggravated the carpal tunnel syndrome. The doctor noted claimant's job was an ideal position for someone post carpal tunnel surgery. Dr. Melhorn further opined claimant had sustained a 7.05 percent impairment to the right and left forearms which convert to an 8 percent permanent partial whole body functional impairment. Lastly, Dr. Melhorn concluded claimant's condition did not warrant a rating for her elbow, shoulder or neck.

As noted, the Administrative Law Judge had referred claimant for a court ordered independent medical examination with Dr. Lucas which was conducted on August 14, 1995. Dr. Lucas testified claimant had provided a history of an onset of pain and numbness in her hand while unpacking recliners on June 23, 1993. She further noted her chiropractor had advised her that her hand problems were related to her back injury. Dr. Lucas concluded claimant's complaints were not related to her work activities. When provided with a description of claimant's job activities, he further opined such work activities would not be a cumulative causative event for the development of carpal tunnel syndrome. The doctor noted, although the claimant had symptoms that were suggestive of carpal tunnel syndrome on the basis of his examination in 1995, he would have neither diagnosed nor recommended treatment for carpal tunnel syndrome.

During the course of litigation of this claim, the claimant's attorney referred her to Dr. Pedro Murati on three separate occasions. Dr. Murati first examined the claimant on December 9, 1996, and diagnosed claimant with severe right carpal tunnel syndrome, right thoracic outlet syndrome and myofascial pain syndrome affecting claimant's right neck and shoulders. The doctor recommended a surgical evaluation for the right carpal tunnel syndrome, repeat nerve conduction studies, a CT myelogram of the cervical spine and physical therapy. The doctor also rated the claimant with a 28 percent permanent partial impairment to the whole person.

Dr. Murati next examined the claimant on April 27, 1998, and diagnosed right carpal tunnel syndrome, chronic cervical strain, thoracic outlet syndrome on the right, myofascial pain syndrome of the neck and shoulders and right lateral epicondylitis. The doctor opined claimant was not at maximum medical improvement and again recommended additional testing to confirm his diagnoses as well as physical therapy and trigger point injections.

Dr. Murati last examined the claimant on April 5, 2000, and diagnosed bilateral hand pain, post bilateral carpal tunnel syndrome releases and right shoulder pain with mild glenohumeral crepitus. The doctor opined the conditions resulted from claimant's work-related injury beginning January 1, 1995, and her subsequent work activities after that date. The doctor opined based upon the Fourth Edition of the *AMA Guides* the claimant had an impairment of 10 percent to each upper extremity for mild carpal tunnel syndrome, an impairment of 6 percent to the right upper extremity for mild shoulder crepitus. Combining the 6 percent and 10 percent to the right upper extremity resulted in a 15 percent impairment to the right upper extremity which converted to a 9 percent impairment to the whole body. The 10 percent impairment to the left upper extremity converted to a 6 percent to the whole body and combining the 9 percent with the 6 percent resulted in a 14 percent functional impairment to the whole body.

The Administrative Law Judge concluded claimant's work activities were not of a sufficient repetitive nature to cause carpal tunnel syndrome and adopted the opinions of the court ordered independent medical examiner, Dr. Lucas, and the treating physician, Dr. Melhorn, that claimant's work activities neither caused nor aggravated claimant's carpal tunnel syndrome.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right depends.² "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."³

Whether an accident arises out of and in the course of the worker's employment is a question of fact and depends upon the facts peculiar to that case.

The claimant contends her repetitive work activities were the cause of her bilateral carpal tunnel syndrome. Although she noted problems with her hands going to sleep before the slip and fall incident she felt that incident aggravated her condition. She further noted after her fall was when her hands really started hurting and continued to worsen as she continued to work. However, the claimant admitted her physical work duties as well as her work hours were restricted and reduced following her back injury in 1993.

The claimant indicated she spent a great deal of her work using the computer. However, her former and current supervisors both noted the computer was used by a

²K.S.A. 44-501(a); see also *Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993) and *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

³K.S.A. 44-508(g). See also *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

salesperson after a sale to input the nine digit number assigned to the particular piece of furniture that was sold as well as the purchasers name and address. The supervisors noted that working on the computer would, at most, take 30 minutes a workday. Such activity would not be considered repetitive and, as Dr. Melhorn noted, the claimant's job was ideal for someone recovering from bilateral carpal tunnel release surgery.

Both Drs. Melhorn and Lucas were provided a description of claimant's job duties and were then asked whether such activities would be a likely cause of claimant's carpal tunnel syndrome. The list of job duties was prepared by the claimant's supervisor and accurately describes claimant's job duties at the time of her slip and fall incident in 1995. Both doctors concluded such activities would neither cause nor aggravate a carpal tunnel syndrome condition.

The Board concludes the more persuasive evidence was provided by the treating physician and the independent medical examiner. Both doctors concluded claimant's carpal tunnel syndrome was neither caused nor aggravated by her work. Accordingly, the Administrative Law Judge's determination that claimant failed to meet her burden of proof to establish her carpal tunnel syndrome was caused by a work-related accident is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Jon L. Frobish dated January 12, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Larry Shoaf, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director